

THIRD PARTY VICTIMS OF INJUSTICE: FAMILIES OF DEFENDANTS

An Undergraduate Research Scholars Thesis

by

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Submitted to the LAUNCH: Undergraduate Research office at
Texas A&M University
in partial fulfillment of requirements for the designation as an

UNDERGRADUATE RESEARCH SCHOLAR

Approved by
Faculty Research Advisor:

Dr. Linda Radzik

May 2021

Major: University Studies - Society, Ethics, and Law Concentration

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ABSTRACT

Third Party Victims of Injustice: Families of Defendants

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There is no question that crime has immense ripple effects on communities all over the United States. Direct victims of crimes suffer immense consequences and often times are never able to fully seek justice for the wrongdoings against them. However, in the State of Texas, Victim Compensation Programs (VCP) allow for direct victims to receive aid for the harms they have experienced. This aid is not offered to other victims who are not directly targeted by the specific crime. However, when a defendant is arrested and subsequently incarcerated, the people in their immediate family often experience consequences of that punishment even though they are innocent of any wrongdoing. They are third-party victims of the crime. This is an injustice. It is clear that direct victims and third-party victims like the families of defendants experience similar versions of injustice but are treated very differently. Financial strains and emotional trauma are just some examples. This suggests there is further research to be done on why the government has not addressed this side of injustice. VCPs are not available to third party victims in Texas and the same is true in most other states.

There are many hypothesized reasons for this. Additionally, there are many different forms of punishment that defendants are sentenced to that vary in scope. This idea of scope focuses on how harmful this punishment is to the defendant, those around them, and their community. Some forms of punishment have a wide scope in which third parties experience dire consequences for a crime they did not commit. Incarceration is found to have the biggest impact on third parties. Other forms of punishment, such as fines, still affect third party victims but the harms that they experience are not as detrimental. These punishments have a smaller scope. In this thesis I will argue that the state ought to help third party victims in either a proactive or reactive way. A proactive approach would be keeping in mind the family of the defendant when considering what punishment is appropriate. Prosecutors often consider direct victims in punishment but rarely do the same for third party victims. A reactive approach would be to offer them aid through VCPs like they do with direct victims. Regardless of which option is appropriate, every criminal case involves many individuals and the state ought to consider all parties, not just the defendant and the direct victim. This negligence in considering third party victims is problematic and contributes to the systemic problems that the criminal justice system has created in the United States.

ACKNOWLEDGEMENTS

Contributors

I would like to thank my faculty advisor, Dr. Linda Radzik, for their guidance and support throughout the course of this research.

The Data and writings analyzed for *Third Party Victims of Injustice: Families of Defendants* were provided by The Texas A&M University Library and the various databases and resources they provide to students. All other work conducted for the thesis was completed by the student independently.

Funding Sources

Undergraduate research for *Third Party Victims of Injustice: Families of Defendants* did not require funding of any kind.

INTRODUCTION

There is no question that crime has immense ripple effects on communities all over the United States. Direct victims of crimes suffer immense consequences and often times are never able to fully seek justice for the wrongdoings against them. However, in the State of Texas, Victim Compensation Programs (VCP) allow for direct victims to receive aid for the harms they have experienced. This aid is not offered to other victims who are not directly targeted by the specific crime. However, when a defendant is arrested and subsequently incarcerated, the people in their immediate family often experience consequences of that punishment even though they are innocent of any wrongdoing. They are third-party victims of the crime. This is an injustice. It is clear that direct victims and third-party victims like the families of defendants experience similar versions of injustice but are treated very differently. Financial strains and emotional trauma are just some examples. This suggests there is further research to be done on why the government has not addressed this side of injustice. VCPs are not available to third party victims in Texas and the same is true in most other states. There are many hypothesized reasons for this. Additionally, there are many different forms of punishment that defendants are sentenced to that vary in scope. This idea of scope focuses on how harmful this punishment is to the defendant, those around them, and their community. Some forms of punishment have a wide scope in which third parties experience dire consequences for a crime they did not commit. Incarceration is found to have the biggest impact on third parties. Other forms of punishment, such as fines, still affect third party victims but the harms that they experience are not as detrimental. These punishments have a smaller scope. In this thesis I will argue that the state ought to help third party victims in either a proactive or reactive way. A proactive approach would be keeping in

mind the family of the defendant when considering what punishment is appropriate. Prosecutors often consider direct victims in punishment but rarely do the same for third party victims. A reactive approach would be to offer them aid through VCPs like they do with direct victims. Regardless of which option is appropriate, every criminal case involves many individuals and the state ought to consider all parties, not just the defendant and the direct victim. This negligence in considering third party victims is problematic and contributes to the systemic problems that the criminal justice system has created in the United States

1. DIRECT VICTIMS

1.1 Defining a Victim

In order to properly distinguish the effects that certain involved persons experience while being a part of the criminal justice system, it's important to clarify who is considered a victim in the state of Texas and who is not. This determination is important because it is what allows for certain victims to receive aid from the state. Nationally, a victim is considered anyone "who has been directly and proximately harmed (physically, emotionally, or financially) as a result of the commission of a federal offense or an offense in the District of Columbia" (FBI). It is with this definition that the National government classifies a victim who is directly affected by an offense. The term "directly", is ambiguous and frankly is not clarified within the law but has been interpreted as characterizing the victim as someone who the crime has been committed against. For example, someone who is assaulted would be considered a direct victim. The scope of the term "directly" also extends to the families of murder victims as well. Because the national government has set a precedent with the definition and interpretation of who is considered a victim in criminal cases, the state of Texas and its policies has the same interpretation. The Texas Department of Criminal Justice defines a victim capable of receiving aid from the state as someone who "is the victim of the offense of sexual assault, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, or disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another".

The distinction of who is considered a victim in the eyes of the law is important because the aid these victims are able to receive from the state is not only extremely beneficial to those who have experienced trauma because of the unfortunate effects of crime, but also are important

steps that direct victims need in order to recover from the injustices they have experienced. However, beyond the vague definitions provided by these government agencies, there is much more of a complexity that exists in the definition of a victim. In a more general philosophical context, a victim is someone who has experienced “a harm or loss is a disruption of or interference in a person's well-being, including damage to that person's body, psychological state, capacities to function, life plans, or resources over which we take this person to have an entitlement” (Hampton 1662). Direct victims of crime fall into this category and additionally become a part of the criminal justice system since their perpetrator has broken the law. In Jean Hampton’s “Correcting Harms Versus Righting Wrongs: The Goal of Retribution,” victims are victims in virtue of being wronged, and harms are the detrimental effects that come with that wrong. More specifically, when a crime has been committed against someone, their rights have been violated and the crime that has been committed against them has devalued them and thus taken something humane from them. Harms and wrongs are both phenomena experienced by victims and the criminal justice system provides ways in which a victim may seek justice for their harms and wrongs.

1.2 How Direct Victims Seek Justice

An idea that is often used to explain how direct victims seek justice is through trial. On the surface, this makes sense, as trial is understandably thought to bring justice all around, meaning that all involved are able to present their case in the court of law and have it heard by a jury. The role direct victims play in trial proceedings is very important as “victims of crime, and other people who have knowledge about the commission of a crime, are often required to testify at a trial or at other court proceedings” (The United States Attorney’s Office Eastern District of California). On the surface, justice and trial go hand in hand, but upon analyzing the implications

of trial, it does not have the intention of seeking justice for direct victims. In fact, direct victims often have very troubling and disturbing experiences during trial because of cross examination. Cross examination is a necessary part of criminal procedure as it allows the opposing side to question the validity of a witness statement while on the stand. On the prosecutorial side of crime, during trial, it is advisable to have direct victims testify in order to expose the jury not only to important information regarding the crime being prosecuted, but also show the jury the impact this crime have had on the direct victim. This occurs during the guilt/innocence determination part of the trial. Normally, the direct victim is individual who the defendant has committed the crime against which then allows the state to use them as a witness and any witness that agrees to give testimony during this phase is required to undergo cross examination by defense counsel. When a witness goes up on the stand, they are required to undergo cross examination where their credibility is often questioned by the defense. Not only is it difficult for the victim to revisit what can be a very traumatic event in their lives, they are often questioned strategically by the other side to make their testimony look false and try to discredit their story. This can sometimes lead to a tone during questioning that is themed in: it is the victim's own fault for the crime they have experienced. It is because of the negative emotions that come with being questioned on the stand that trial is not very validating for the victim and can often reignite previously experienced trauma.

The reasons for this preconceived notion of justice for victims during trial comes from prosecutors and the arguments they make to the jury. During trial, prosecutors often theme their arguments on seeking justice for direct victims even though that is rarely the case. In actuality, the point of trial is to determine guilt or innocence of the defendant. Prosecutors might use the direct victim's testimony to connect to the emotional side of a jury so they can sympathize with

the victim and consequently, find a guilty verdict for the defendant or determine punishment during the punishment phase. The jury is then convinced that justice has been served for the defendant and the victim.

The act of trial in and of itself is not enough for the direct victim because the proceeding of trial alone is not enough to resolve the victim of their injustice, which consists of wrongs and harms. Although trial might be a part of the justice that a victim might need, there are other harms that are not resolved or improved with trial. Some examples of these harms might be financial and emotional burdens. These are not rectified with criminal trial. Additionally, it is difficult to explain how a victim benefits from a guilty verdict. Maybe in some instances the victim feels safer knowing the person that has caused them harm is not out in society. There might be some aspects of trial in which direct victims are able to seek justice. For example, the punishment phase of a trial where direct victims can give Victim Impact Statements (VIS) without being questioned on their credibility by defense. Another might be when a defendant is sentenced to time in prison. These small pieces of the entire trial proceeding can allow for victims to find justice but cannot completely rectify the harms they have experienced. In many cases, trial simply rights the wrongful action that is the crime committed but excludes the vindication of harms.

However, it is important to note that the decision to go to trial, on both the defense and prosecutorial side is not made because of the victim in most circumstances. In general, “in a modern criminal trial, two important things have happened. First, the parties are being represented. Secondly, the one party that is represented by the state, namely the victim, is so thoroughly represented that she or he for most of the proceedings is pushed completely out of the arena, reduced to the triggerer-off of the whole thing. She or he is a sort of double loser; first,

vis-a-vis the offender, but secondly and often in a more crippling manner by being denied rights to full participation in what might have been one of the more important ritual encounters in life. The victim has lost the case to the state.” (Christie 3). There are countless reasons to go to trial on both the prosecutorial side and the defense side of a certain criminal case but when trial is decided between both parties and begins, the role direct victims play throughout it is important as they give eyewitness testimony and the criminal justice system simply “cannot function without the participation of victims” (The United States Attorney’s Office Eastern District of California). Although direct victim’s testimony is often necessary for trial, they do not have any power over the destiny of their case. This goes further to question whether trial is really an important avenue for direct victims to seek justice. Direct victims play a minimal part in the conviction of their perpetrator. The disassociation from their case arguably does not allow for injustice to be properly rectified since they have a more back seat role in the defendant’s destiny.

There is an argument to be had on positive reasons why the state goes to trial. The state’s effort to go to trial and prosecute the defendant can be seen to rest on the idea of valuing the direct victim. It can be understood that when a crime is committed against an individual and they are harmed, they are devalued. Prosecuting a defendant or going to trial, “is a response to a wrong that is intended to vindicate the value of the victim denied by the wrongdoer’s action through the construction of an event that not only repudiates the action’s message of superiority over the victim but does so in a way that confirms them as equal by virtue of their humanity” (Hampton 1686). This idea works in a general sense for prosecution not only for trial. The state’s actions can be reasoned this way and trial is where the state is publicly able to show their efforts in trying to redeem that value the direct victim has lost.

In general, trial serves many different purposes. It is used to determine guilt or innocence of the defendant. It is used when either side of justice system (whether that be the state or defense) need to present their case in front of a jury. It is used in order to show that that state respects the value of the direct victim. Arguably, it vindicates some of the consequences of crime the direct victim has experienced (although it does not repair all the harms they have experienced). Regardless of what reasons either side has for going to trial. It is a fundamental part of our court system in the United States and its complexities have many effects on those involved in it. One thing remains clear, trial is simply not enough for the direct victim to feel completely vindicated from the injustice they have experienced as trial simply rights the wrong experienced by the victim but does not address all the harms that victim might have experienced (for example psychological and financial). Because of this, the state offers victim compensation and many other programs to help direct victims in their search for justice and peace. Separate from aid, there are many other ways in which victims find vindication for the harms they have experienced that are separate from trial.

There are several alternate circumstances in which a direct victim might experience vindication for the injustice they have experienced. These different circumstances can only be supplied by the courts, the defendant, the state, or the community as a whole. Beginning with the court system, a declaration of guilt and punishment of the wrongdoer that is proportional to the harm committed to the direct-victim are both circumstances where the direct-victim might feel vindicated, but these do not necessarily involve a trial. A finding of guilt can be established in a plea and punishment can come from a plea. These two conditions of justice for the direct victim need to go through the court system to be seen. A case needs an attention of a judge, the defendant will have representation (except if they decide to defend themselves), and the attention

from the state in order for these outcomes to come true. The defendant can also help in the vindication of the victim. Offering an apology is a prime example of how a defendant might be able to help the direct victim seek justice. However, it is important to note that an apology given the circumstance of a crime might not do much for the victim. For example, if a direct victim has been raped, I'm not sure if an apology would really be enough for the direct victim to feel vindicated in the slightest. It seems that with apologies, there are some circumstances in which it would be appropriate and others in which it might not really be an option in the vindication of the victim. Additionally, for vindication to be experienced, the direct victim would have to sincerely accept that apology which (depending on the nature of the crime committed) might be quite challenging. If the defendant admits that he is guilty, this might be vindicating if the defendant is willing to experience the consequences of that crime. An admission of guilt is very similar to a plea, except an admission of guilt does not necessarily involve the court system (although it often does). The state plays a role in the direct victim seeking justice for the harms they have experienced and there are many ways in which the state can enable the direct victim to seek vindication. One of the most important services that the state provides for direct victims fall under Victim Compensation Programs. These programs will be described in detail later in this chapter. The state in certain circumstances might be able to explain the details of the crime to the direct victim. This allows the direct victims to get an understanding how the circumstance and evidence behind the crime. Transparency can also be a great tool for direct victims to not only understand the nature of their injustice but can also be useful in putting an untold story together. Like mentioned before, the direct victim is often removed from their case and in result might not know important information they need to in order to seek justice for the harms they have experienced. The community also plays a vital role in the vindication of the direct victim. If the

community sides with the victim, publicly condemns the defendant, and acknowledges that the victim deserved better, the victim might find it easier to seek justice. Public support allows the direct victim to feel validated. Looking at all of these different ways a direct victim might seek vindication is extremely important in understand that impact crime has on victims in general. It is hard to argue that if all of these ways are not obtainable/available to the direct victim that complete justice is capable of being sought.

It is a challenge to truly include every way in which a direct victim might seek vindication for the harms they have experienced. Just a brief description has been included in this section. It is impossible for anyone to truly understand what a direct victim needs in order to be at peace with what they have endured. It is also important to note that the severity of crime is quite drastic. A victim of theft versus a victim of sexual assault will need different things in order to seek vindication. Arguably, complete vindication and seeking justice might never be possible in some circumstances. But what remains true is that direct victims deserve to have vindication for the harms they have experienced. Their injustice should be squashed. In most instances, society is on their side in this fight for vindication and justice.

1.3 Aid from the State

Like mentioned previously, there is substantial aid that is offered to direct victims to from the state in an effort to undo or subside the harms they experience. This aid comes in many different forms including Victim's Crime Compensation, counseling, rent/relocation, attorney fee coverage, travel expense coverage, childcare coverage, rehabilitation (Texas Attorney General's Office). Direct victims have resources provided by the state to not only help rectify the injustice they have experienced but are also able to heal from the traumatic experiences that can come from being a victim of a crime. Whether or not these programs enough for direct victims to fully

heal is debatable. Some crimes are so distressing that many victims never heal properly, but the aid that the state provides allows for direct victims to take steps in the right direction for recovery. These programs have been strictly decided through policy as they are funded by the state's budget. The governor along with the state legislature are primarily responsible to decide what government programs receive funding and what amount is appropriate. These programs are very important to direct victims and their experience within the criminal justice system, as these programs not only allow survivors of crimes to heal from trauma but allow them to find peace and justice. However, these victim compensation programs are for direct victims only and are only available to those who are directly involved in the criminal case that the state is pursuing. The government has created a very narrow scope of availability for these programs, and as will be discussed later, crime has adverse effects to many outside the circle of direct victims. Other individuals experience large injustices, and these individuals are not allowed the same opportunity to heal from their harm. These programs that are intended to "clean up" the mess a crime has created in reality just plug up a small hole in a sinking ship that is the criminal justice system and the consequences that come with it.

The criminal justice system is a system that shakes communities. Its effects are countless and the power it has to alter society is one that is limitless. The harms that come from crime range from miniscule to permanently life altering. It is truly impossible to try and seek justice for each individual who is affected by a crime given the scope it has on society is infinitely large. However, the state involves itself in rectifying some harms and not others, with very little explanation as to why. The reasoning behind this narrow distinction of who the state helps and who they don't has everything to do with how a victim is defined and who is responsible for aiding that victim in their journey to seek justice and peace.

2. EFFECTS ON FAMILIES OF INCARCERATED INDIVIDUALS

The United States has an overwhelmingly large incarcerated population. Incarceration affects communities and households on a large scale and is so common among Americans that “one in four American adults has had a sibling incarcerated. One in five has had a parent sent to jail or prison. One in eight has had a child incarcerated” (Equal Justice Initiative). With incarceration so rampant throughout the US, there is a question of the large-scale effects this has economically, psychologically, and socially on American life as we know it. Looking more on a small scale, having an incarcerated family member is a life altering circumstance, especially when the event of becoming incarcerated happens during the span of the familial relationship. For example, a husband or wife being arrested, found guilty, and then sentenced during a marriage or while raising a family. Effects might be different for those who are born into families with already incarcerated individuals. The focus of this chapter will be primarily on the effect’s families experienced when someone becomes incarcerated rather than someone being born into a family with an incarcerated family member. Specifically, immediate family members will be used as reference as they have been studied more and are more likely to experience the direct effects of incarceration that consequently lead to injustice. When someone is sentenced to prison/jailtime, regardless of the length of sentence, very rarely is sentence time reduced because of the adverse effects their family members will experience. This is because “typical of our formal under acknowledgement of the role that third-party interests play, the U.S. Sentencing Guidelines make no explicit provision for their consideration” (Brown 1390).

In rare conditions when the impact of incarceration is taken into account, it is more often than not a misdemeanor without a direct victim since prosecutors are able to better analyze the

specific situation without the pressure of having to validate the direct victim and the injustice they experience. The pressures the state experiences while trying to decide appropriate punishment for a defendant are numerous and ultimately, the state is pulled in many different directions in order to satisfy all parties involved in the criminal case. Prosecutors must take into account the victim (if there is one), the politics of the office they work for (whether it is Republican or Democratic), what the community wants for the victim or defendant, and whether the case is even strong enough to satisfy all of these parties. More specifically, District Attorney Offices that put value on more restorative policies (who often lean left politically) are more likely to take into account the wide effects that incarceration has not only on the defendant, but those who rely on them in any kind of way, whether they bring in income, are a parent, are a caretaker, or serve any kind of important purpose in a family dynamic. Restorative philosophies of justice in criminal law conceptualizing doing justice as the act of trying to repair the harm caused by criminal behavior. When restorative justice philosophies are used to decide the outcome of criminal cases, the impact and effects of third-party victims is normally reduced, and consequently so is the injustice. But given that restorative justice philosophies are not common among the District Attorney Offices in the south, and much less the State of Texas, the effects that family members experience from having someone incarcerated are life altering in a negative way. These effects are numerous, and all are connected in one way or another. Additionally, family members that experience adverse effects of incarceration have not been charged with a crime and although they are not experiencing direct punishment like the defendant, they are experiencing negative outcomes of a crime they did not commit; thus, an injustice is present.

2.1 Financial Strains

One of the biggest effects that families of incarcerated individuals experience is financial loss. These effects can happen in a multitude of ways, but it is first important to note that the majority of incarcerated individuals are of middle but mostly lower class. This factor is important to clarify as the majority of the incarcerated population are low-income individuals. According to non-profit organization Prosperity Now, in 2015 “incarcerated people ages 27-42 had a median annual income of \$19,185 prior to incarceration, a figure that is 41 percent less than non-incarcerated people of a similar age” (Levere). With money already scarce, having a family member incarcerated can mean a multitude of things. First, depending on what kind of representation they have, the financial burden of being involved in the criminal justice system is quite large. If they have hired their own representation, attorney fees can be in the thousands and when crimes are felonies with more prison time, attorney fees can go into the tens of thousands of dollars. Additionally, if defendants choose to be represented by a court appointed attorney, there are still substantial fees that come with being arrested, convicted, and incarcerated. Bail and bond are two financial constraints that are also put on the defendant and consequently, their family. Especially in districts that where patterns of high bail are more common, the financial strain it has on families of incarcerated individuals is more substantial. Nationally there has been an increase in bail, so much so that “in 1990, 53 percent of felony defendants in large counties were assigned bail, and by 2009, this proportion had grown to 72 percent” (Economic Perspectives on Incarceration and the Criminal Justice System 21). Sometimes bail amounts are so high that they do not allow defendants charged with crimes to be released from jail after their bail is set. This then keeps defendants incarcerated before a guilty verdict is determined. There are many reasons a judge might do this, especially if it is a violent crime, but regardless, family

members might suffer because of it. The money incarcerated individuals are required to pay while in the criminal justice system is money that takes from the care of family members. With the financial burdens that are put on families, “there are many other effects that follow sequentially. Being in a financially vulnerable position causes families stress that [can] destabilize marriages and have adverse consequences for children” (Economic Perspectives on Incarceration and the Criminal Justice System 45). Financial impacts on families are only a small portion of the vast effects incarceration has on others. Communities with high incarceration rates suffer financially as well, especially when incarcerated individuals are released and cannot find work because they have a criminal record. The inability for those who have previously been incarcerated to find financial stability when they are released is another problem in and of itself that is well documented. This problem further stretches the effects of incarceration on family members to the length of a lifetime since financial stresses do not end when attorney fees are paid and bail has been posted. The financial effects incarceration has on individuals, families, and communities are numerous and seemingly never ending. But immediate families seem to be those who are most affected by the financial burdens that incarcerated individuals are forced to experience.

2.2 Reputational Harms

The media’s coverage of crime is something most people are familiar with. Especially with local news stations, crime coverage is very common since news channels inform their audience about current events in their area. Presentation of these crime reports varies. For instance, if there is a defendant who is missing and has committed a violent crime, a mugshot or a drawing might be displayed as the story is covered in an effort to find the defendant in question and bring awareness to the community. Another reason might be to specifically talk about a

certain case that is controversial or is important to the community. The reasons can be numerous, but the displaying of mugshots can be harmful, not only to the defendant, who has not been found guilty, but to those who live with the defendant or are known by the community to be connected to the defendant. This can seem problematic especially when the crime committed by the defendant is especially heinous or violent because immediate family members can often be intertwined into the shame that the community may put on the defendant. The shame and embarrassment that comes with being related to a defendant is not always existent, but when it is, it can be crippling and even more so enhanced when the media not only mentions the name of the defendant but shows their mugshot. There is also danger that can be involved in making criminal mugshots so public. Especially with gang affiliated crimes, showing a mugshot of a defendant who is a part of a gang might put the family members of that defendant in danger of some kind of crime or act of violence. The media has a lot of power in terms of how the public perceives current events. Because of this, the public might look at the defendant in a certain negative manner and associate their family with the defendant.

Crime reporting by the media is not always accurate because the press does not have full disclosure into ongoing investigation and collected evidence. This can also lead to harm to the defendant and harm to the immediate family of the defendant. This is problematic since reporting on certain crime is often done before a finding of guilt is determined. The inclusion of mugshots being available to the public has been long debated as a constitutional issue as mugshots tend to establish a preconceived notion of guilt among the community before a court has established such a determination and because of this the tension between community and family of the defendant is heightened. The media plays a big role in the portrayal of specific cases. And consequently, when looking at a mugshot, many in the public automatically assume guilt.

However, it is important to note that the first amendment allows for news stations to cover current events in a truthful and proper manner. Additionally, the community is somewhat entitled to know this kind of information as it is relevant to their lives and in some cases their safety. The importance of transparency between government proceedings and the public is not only important to those who live in these areas where crime is reported but plays a vital role in the public holding the government accountable for their actions. Journalists reporting on crime will often reach out to prosecutors and ask for statements about certain criminal cases. Thus, the government's involvement in crime and the relationship this has with the media is of importance to the public and allows them to judge the execution and proceeding of the criminal justice system. Transparency between government and the public is important and the community has a right to know what decisions are being made on crime that affects their community. Consequently, the media's role in crime is a double-edged sword, but with proper precautions and ethical reporting, the media can reduce the affects that third party victims experience, including immediate family members of defendants and incarcerated individuals.

2.3 Children

Incarcerated individuals and their partners often have children. These children experience these same above effects but in a much different way. But because they are children, the effects they experience are often more serious and long term as they are more vulnerable to negative stimuli. Additionally, to have an immediate family member incarcerated (for example a parent) and being a witness to the other parent going through the financial and psychological effects can be life altering. The relationships children have with their guardian who is incarcerated is life-altering as well. It's important to note that when I mention children with parents that are incarcerated, I am referring to children not directly involved in the actual criminal case their

parent has been charged with. Effects of children who are direct victims of a crime their parent has been charged with is a completely separate matter that will not be included in this section. That being said, children who do have immediate family that are a part of the criminal justice system and are incarcerated are much more likely to suffer from a number of systemic issues that are more alarming in children than in adults.

One of these systemic issues is mental health. Children with immediate family who are incarcerated are much more likely to experience mental health issues. In fact, children are “more than three times more likely to have behavioral problems or depression than similar children without an imprisoned parent, and at least twice as likely to suffer from learning disabilities, ADD/ADHD, and anxiety” (Scommegna). Additionally, “parental imprisonment is associated with children having three times the odds of engaging in anti-social or delinquent behavior and experiencing more negative outcomes as children and adults” (Allard 50). Behavior like this is alarming at a young age because if issues like this go unaddressed, it can lead to involvement in the criminal justice system for the child later on in life. Patricia Allard, in “When the Cost is Too Great: The Emotional and Psychological Impact on Children of Incarcerating Their Parents for Drug Offences,” explains that having a parent who is incarcerated not only leads to psychological issues at a young age but additionally behavioral issues that are directly linked to the upsetting nature of children having their parent taken away from them. This is especially the case when the incarcerated parent is the primary caretaker and has been involved in the life of the child. Specifically, “children are twice as likely to develop serious mental health problems. Earlier studies also suggested that parental imprisonment was associated with missing the imprisoned parent, sadness, withdrawn behavior, sleep problems, aggressive behavior, deteriorating school performance, truancy, and sometimes delinquency” (Allard 50). The mental

issues that a child of an incarcerated person might experience are often times heightened because “unlike children of the deceased or divorced who tend to benefit from society’s familiarity with and acceptance of their loss, children of the incarcerated too often grow up and grieve under a cloud of low expectations and amidst a swirling set of assumptions that they will fail” (Allard 50).

Children (like adults) who have immediate family members that are incarcerated suffer financially. The other caregivers’ resources might be limited because of court fees and other circumstances that were explained earlier (like lost income of the incarcerated parent). But in addition to the psychological effects children experience, the financial limitations that incarceration does not allow for the psychological issues to be addressed. This is especially true since third party victims are not permitted to receive crime victim compensation and all the programs and treatments that come with this service. Leaving families to heal children without the help of a professional can not only be extremely stressful on the part of the primary caretaker but can add additional harm to children who have suffered mentally because of the effects that remain unaddressed. Children are innocent of the crimes their parents have committed yet they are arguably the most vulnerable to the effects that come with incarceration. Without additional help, they are more likely to not only suffer from psychological and financial strains, but they are also more likely to fall into patterns of bad behavior that can lead to trouble in the future.

2.4 Overview

The effects people experience when they have a family member incarcerated are numerous. The ones listed in this chapter are only those that were most obvious upon conducting research. What is most interesting about these harms is that they are very similar to what a direct victim may experience. Financial and psychological effects are experienced by direct victims,

especially when they have been harmed, or their property has been damaged. Direct victims are also wronged and devalued by the person who has committed the crime against them. This distinction made by Hampton is fundamental in the recognition of third-party victims. Third party victims not only experience very similar harms, they also are wronged. The simple fact of experiencing forms of punishment for a crime they did not commit is what devalues them and makes them a victim of injustice. Hampton's analysis of victims applies the same to third party victims, the only difference is that who is responsible for those harms and wrongs is debatable and the very center of this whole thesis. There are a lot of different options to hypothesize on. Is the state or the defendant to blame? Maybe it is the criminal justice system in general that is to blame for this overlooked injustice. These options will be discussed in a later chapter.

Although under Hampton's reasoning both direct and third-party victims are wronged and harmed, one qualifies for aid from the state and has reputational and communal support while the other does not. Third party victims, although victims on an injustice, do not receive any of the support or aid that direct victims are entitled to by law. These effects have significant impact on many lives and many of them go unresolved for a number of reasons, the biggest being that the defendants themselves are not able to try and fix the harms that third party victims experience because they are incarcerated. Unresolved issues have consequences for adult relatives and affect children who are also a part of the family. Children are most vulnerable to these effects and because many do not try to solve the issues that arise, a snowball effect is very likely, and children end up having issues in their adult lives that are connected to involvement in the criminal justice system.

Because these effects are so drastic, there is a question of how punishment should be handled in the criminal justice system. As stated before, there is not precedence set forth about

keeping third parties in mind while considering punishment. There also seems to be limited information about whether those choosing punishment (either the judge or the District Attorney's Officer) should consider those who will experience major effects as third parties. Careful consideration is always made in the interest of the direct victims. This should be done, this is not wrong, and it is one of the major duties the judge/ District Attorney's Office has as an enforcer of the law. But this consideration is not given to other victims who are not directly involved in the crime. There seems to be no line drawn in terms of the weight punishment has on anyone other than the defendant. Incarceration harms families; it takes away stability and makes people's lives more difficult. The effects mentioned in this chapter prove that. With no help from the state, families are left to try and fill the void of the incarcerated individuals' role in the family, fulfill the financial role they might have played before incarceration, and heal psychologically from all the issues that have arisen from the crime. This is an injustice that is put on them and never seems to get rectified. We are left with not knowing who exactly is responsible for correcting this wrong and fixing these harms. There are different possibilities. The defendant could be responsible for this, since they themselves have put their family in the situation to be wronged and harmed. The state could also be responsible, since they are the ones enforcing punishment on the defendant. Or maybe the state is not responsible but because third parties experience the same harms as direct victims, they ought to qualify for aid from the state (since they do the same with direct victims). These questions are difficult to resolve, but in order to stop the systemic problems that these unresolved effects can bring, there needs to be a way for families to not only rectify their injustice but seek peace, just like direct victims are given the resources to do so.

3. FORMS OF PUNISHMENT ON DEFENDANTS

3.1 Introduction to Forms of Punishment

There are many different ways defendants involve themselves in the criminal justice system. This chapter explores the more popular directions that criminal cases follow. This chapter also examines and describes the effects that these different routes have on the defendant and thus have on their families. Although not all these routes directly involve incarceration, they are all “solutions” that the state comes to when dealing with certain criminal cases. These different courses of action also are dependent on the kind of crime that is committed. This is because crimes differ in severity (misdemeanors and felonies for instance) and whether there are direct victims involved or not. Additionally, some of these courses of action are not universal across all counties in Texas or the United States. Like mentioned in previous chapters, the course a criminal case takes is often completely up to the District Attorney’s Office of that county. Defense Counsel and the judge elected to the court in which the case is held in might also have a say in the direction of certain criminal cases. However, any direction a criminal case goes, the prosecutors on the case have the most control. Another idea that is introduced in this chapter is the effects after criminal cases have seen their conclusion within the system. After punishment has been completed by the defendant, there are various consequences that must be dealt with by the defendant and their family.

3.2 Pre-trial Diversion Programs

Pretrial diversion programs were first introduced in the 1970s as a way to divert certain non-violent criminal cases. They then disappeared during the “tough on crime” era of the 80s and 90s where punishments (even for misdemeanors) were quite strict and many times required

lengthy prison sentences. They have reemerged within the last 15 years as ways to divert certain criminal cases from being punished by prison or jail sentences. This new approach is really only executed by District Attorney Offices that have a more restorative approach to crime and justice. Pretrial Diversion is offered in many different ways and aims at giving “offenders a chance to change their lifestyle through education, training, supervision, victim awareness, and other similar programs without the additional stigma of a conviction on their record” (Alarid 242). Additionally, “successful completion of diversion requirements [leads] to cases being closed by the prosecutor’s office—i.e., without ever filing the case with the court. Across the post-filing programs, most dismissed the cases of successful participants, although not all programs expunged the record of the arrest” (Johnson). Essentially, pre-trial diversion aims at dismissing certain criminal cases by allowing defendants to complete a certain kind of training, class, therapy, or probation-like program and as a result having their case is dismissed. Defendants who go through pre-trial diversion can avoid incarceration and can keep their criminal record clean so they can continue to be a productive member of society. According to the US Attorney’s Office the major objective of pretrial diversion are:

- “To prevent future criminal activity among certain offenders by diverting them
- from traditional processing into community supervision and services.
- To save prosecutive and judicial resources for concentration on major cases.
- To provide, where appropriate, a vehicle for restitution to communities and victims
- of crime.”

Given that these are really the most important goals of pretrial diversion, the prosecutor in charge is to really have the ultimate say in what happens and what the state offers. Of course, supervising attorneys must approve as well but pretrial diversion rests solely on one side. Pretrial

diversion requires collaboration between the defense counsel and prosecutors as pretrial diversion is a very desirable outcome for defense attorneys and their clients since their cases are dismissed and defendants are not left with a criminal history. It is important to note as well that pretrial diversion is offered to first time offenders most of the time, very few cases of pretrial diversion are offered to defendants with a past in the criminal justice system. One reason for this might be that prosecutors are confident in the defendant's ability to complete the program since they have had issues with the law previously. Regardless of the circumstances, pretrial diversion has positive and negative effects on defendants and their families. The two following paragraphs will examine these positives and negatives.

There are many positives to being offered a pretrial diversion program. Since the premise of pretrial diversion is to avoid incarceration, defendants that are offered a program and complete it completely avoid it and all the negative effects it has on them and their family. These negative effects vary in number they are included in a later section within this chapter. Chapter 3 also goes into depth about the effects families experience. With no jail/prison time included in punishment, defendants are given the opportunity to be active members of their family and contribute whether that be financially, with their children, or any other way. It is more "efficient use of justice system resources through reducing the number of court cases or defendant contact with the system was seen as a very important diversion program goal" (Johnson). Defendants are allowed more freedom to fix the problems that have arose from their involvement in the criminal justice system. They are given the chance to make up for the financial loss of all the fees that come with being involved in the criminal justice system. They are also able to rectify the injustice that their families have experienced since the arrest because they are not bound by the restrictions of prison.

Like mentioned before, pretrial diversion focuses on defendants that are first time offenders. This helps reduce the mass incarceration issue that exists in counties since reoffending rates in pretrial diversion are extremely low compared to other forms of punishment. When pretrial diversion is offered to defendants, the programs that comes along with it is normally very detailed and planned out. Depending on the crime, these programs do more than serve as a punishment, they aim at fixing life problems that defendants might have. DUI pretrial diversion might include getting interlocks in cars to ensure defendants are not drinking and driving, drug possession might involves attending Narcotics Anonymous. Prostitution pretrial diversion might involve psychotherapy since many prostitutes are victims of sex trafficking. Pretrial diversion is beneficial to defendants as it allows them the ability to make up for their mistakes and have a second chance to a normal life free of a criminal record. These specific programs have seen much success. A study done by the United States Department of Justice states “recidivism rate for offenders who completed a diversion program was lower than the general recidivism rate for federal inmates” (DOJ). Defendants completing these pretrial diversion programs are not reoffending at the same rates as other forms of punishment that are discussed later in this chapter.

Lastly, pretrial diversion is extremely beneficial to counties because it saves a significant amount of money. Since defendants are not being incarcerated, counties save money on incarceration costs. Additionally, many of the programs require additional fees that the county is able to use to improve the programs or use elsewhere. Overall, there are many upsides to pretrial diversion, it is a new way of dealing with crime that has seen much success in many different ways, but with every application of the law in the criminal justice system, there are issues that arise.

There are several issues with pretrial diversion. Many of them stem from the benefits that were mentioned in the previous paragraph. Firstly, pretrial diversion can still have a heavy impact on defendants and their families financially. Not only are there extra fees involved in the requirements that come with pretrial diversion programs, but pretrial programs take a long time to complete which consequently requires more billable hours from defense counsel. Often times, to receive a pretrial diversion program, a case has to be at least a year old. This is because there is a lot of communication that is needed between defense counsel and prosecutor in order to work out a deal where pretrial intervention is an option. Another reason for lengthy time might be because prosecutors often have a big case load which does not allow them to resolve cases in a timely fashion. Additionally, the defense attorney is still technically on the case while the defendant is in the program, especially if the defendant violates one of the terms of the program. The lengthy process of pretrial diversion ends up costing the defendant and consequently their family a lot of money because of excess fines and attorney fees. When attorneys are court appointed, obtaining a pretrial diversion agreement is not as likely. Court appointed attorneys have a huge case load and are less likely to fight for a pretrial diversion since it is something that has to be negotiated over a long period of time. The saying of time is money is very true in this regard. As other routes are much speedier (pleas for example) so pretrial diversion is sometimes not mentioned as an option upfront.

Another downside of pretrial diversion is that it is mostly only offered for misdemeanors and petty crime. When it comes to felonies, pretrial diversion is almost non-existent. District attorney's use pretrial diversion as a way to prevent defendants from recommitting and or committing a felony. When a felony has been charged, there are almost no options for pretrial diversion. Sometimes possession of controlled substances cases are handled in a similar fashion

than pretrial diversion but these kinds of program are few and far between. With a felony conviction, defendants are very limited in what they can accomplish with a criminal record. They are restricted in a number of ways; they cannot vote nor can they own a firearm. But they also have an extremely difficult time finding good employment. This is another financial burden that effects the family. Since pretrial intervention only applies to certain criminal cases, its effectiveness is limited. Overall, there are many downsides to pretrial diversion, but in many cases, it has brought a lot of good to the criminal justice system as it pleases both the state and the defendant. It also narrows the scope of punishment that the defendant and their family experience. Family members are less likely to feel this burden of punishment if the defendant is actually able to make up these injustices in society instead of being incarcerated. Like with every punishment and procedure, there are issues but if done properly can make a big change in counties that believe in diverting certain criminal cases.

3.3 Prison/Jail

When pretrial diversion is not an option, there are very few other forms of punishment that are left besides imprisonment. Prison/jail sentencing is by far the most common form of punishment in felonies. This is evident through the mass incarceration that exists throughout the United States. Unfortunately, given that prison is such a popular punishment, its effects are very prevalent in almost all communities. These effects are for the most part are negative on defendants and their families. Many of these negative effects have been mentioned before in chapter 2 where the effects of incarceration on family is analyzed but, in this chapter, the specific consequences for defendants will be mentioned. Effects of incarceration on defendants is important to explain because these effects consequently affect families of defendants and are correlated with reoffending rates.

These negative effects almost always stem from the polarization or outside society and prison society. I mention prison because most sentencing for felonies and other crimes is made for defendants to do their time in prison. Prison is normally where defendants with long term incarceration Jail often holds defendants if they cannot make bail or bond. Incarceration before a finding of guilt involves another injustice that will not be analyzed or mentioned in this paper, but the terms of jail and prison are interchangeable as they both serve the same purpose in punishment and both have similar environments. They both also have the same negative effects when defendants leave these institutions.

Prison and jail are so different from outside society that prisoners experience “self-imposed social withdrawal and isolation may mean that they retreat deeply into themselves, trust virtually no one, and adjust to prison stress by leading isolated lives of quiet desperation. In extreme cases, especially when combined with prisoner apathy and loss of the capacity to initiate behavior on one's own, the pattern closely resembles that of clinical depression. Long-term prisoners are particularly vulnerable to this form of psychological adaptation” (Haney 81). Whether in general population where prisoners are stacked one by one in a big room or are in solitary confinement, prisoners are exposed to a number of circumstances that are completely polarized from the real world. Constantly being searched by prison officers, no being allowed to have personal property, having to constantly be in handcuffs are just a number of conditions that prisoners have to abide by that are not in the real world. With “at least 95% of all state prisoners will be released from prison at some point”, the adjustment to the real world upon release is one that has not been deemed as proactive or successful since “close to 70% of these offenders will be rearrested in 3 years or less” (Hutcherson 316). This can be for a number of reasons. Prisoners that are mentally ill are able to see health professionals when they are incarcerated. In fact, the

largest institutions for treating mental illness are prisons. Once released, this upkeep is not as readily available. Convicted individuals can stray from their treatment and or medicine which puts them at risk of rearrest or not abiding by the conditions of their parole. Additionally, with a criminal record, many times a felony criminal record, finding a good paying job that can take care of a family is difficult.

In general, “prison is painful, and incarcerated persons often suffer long-term consequences from having been subjected to pain, deprivation, and extremely atypical patterns and norms of living and interacting with others” (Haney 79). When convicted individuals are released, they don’t stand a very good chance to find success in society because of the effects of prison life. For defendants, “incarceration has become a key life event that can harmfully alter traditional life course stages” (Hutcherson 316). Prison and Jail sentences are not effective for rehabilitation or reintegration into society. Re-offense rates are really high, and many convicted individuals end up back in prison for a number of different reasons. Parole and probation are mentioned briefly in this section but will be thoroughly examined as they too create issues for defendants are contribute to the high re-offense rates of convicted individuals.

3.4 Probation and Parole

Before going into the effects that probation and parole have on defendants and convicted individuals, it is important to adequately define the two concepts that serve different purposes in the criminal justice. Probation is a punishment that is given that is similar to pretrial diversion. There are stringent rules that the defendant must follow and once it is complete, the case is no longer active. The stark difference between pretrial diversion and probation is that when pretrial diversion is complete, the case is dismissed. This is not the case for probation. Probation is given as a punishment and requires a finding of guilt.

Parole is the time period after imprisonment that has the function of reintegrating defendants into society after they have served time. Often times, defendants will only serve part of their prison or jail sentence and get out on parole for good behavior or overcrowding. Parole can be understood as a supervision time where defendants are required to follow certain rules depending on what crime they have been found guilty of. Additionally, someone on parole “may obtain help with problems concerning employment, residence, finances, or other personal problems which often trouble a person trying to adjust to life upon release from prison; (2) parole protects society because it helps former prisoners get established in the community and thus prevents many situations in which they might commit a new offense” (United States Department of Justice). According to the United States Department of Justice, “when someone is paroled, they serve part of their sentence under the supervision of their community. The law says that the U.S. Parole Commission may grant parole if (a) the inmate has substantially observed the rules of the institution; (b) release would not depreciate the seriousness of the offense or promote disrespect for the law; and (c) release would not jeopardize the public welfare”. Parole also requires a finding of guilt. Parole and probation are very important to the discussion on effects of crime on defendants and their families because “4.5 million people are on probation or parole—twice the incarcerated population, including those in state and federal prisons and local jails” (PEW). Both systems and forms of punishments were “originally designed as an alternative to incarceration” (Schwartzapfel). But the good intention of these alternative punishments does not ensure success as both concepts have negative effects on defendants and consequently, their families.

The negative effects of parole and probation are various in number but one of the most obvious ones are that both programs have “become a significant contributor to mass

incarceration” (Schwartzapfel). This is because circumstances that parole and probation make defendants in post-conviction follow are easy to break. Parole and probation are not able to adequately supervise and aid defendants. There are over “4.5 million people are on probation or parole—twice the incarcerated population, including those in state and federal prisons and local jails. The growth and size of the supervised population has undermined the ability of local and state community corrections agencies to carry out their basic responsibilities to provide the best public safety return on investment as well as a measure of accountability” (PEW). Without being able to adequately handle each case, parole and probation officers cannot ensure that defendants are getting the services and attention they need to not only successfully reintegrate back into society, but also get aid for any issues they might have relating to their criminal record. The over working of the probation and parole system often leads to reincarceration. In fact, “about one-fifth of felony defendants were on supervision when they were arrested” (PEW). Additionally, “Nearly a third of the roughly 2.3 million people who exit probation or parole annually fail to successfully complete their supervision for a wide range of reasons, such as committing new crimes, violating the rules, and absconding” (PEW). It is easy to see why and how parole and probation are not fulfilling their initial purpose. Both systems can often be ones that enable defendants to become reinvolved in the criminal justice system when technically they are supposed to get defendants out. Although there are good intentions with their creation, better management is needed in order for defendants to reap the benefits of parole and probation. Additionally, a finding of guilt is still the main ingredient in these programs that automatically puts defendants in a vulnerable position when they are in society, trying to make living for themselves and their families. Altogether, there are flaws in this kind of punishment, like there is in all forms of punishment but more can be done to make it effective.

3.5 After Incarceration

Like mentioned before, prison sentences have very intense effects of defendants and their families. But the other punishment methods mentioned throughout this chapter are significant as well as they too have major effects on defendants, especially the ones that involve a finding of guilt. But what are the effects that linger after incarceration? There are several worth mentioning but the impact incarceration has on everyday life seems never-ending and cannot be completely described in this section. However, the effects that have been studied and experiences are extremely important to note. There is no question that “formerly incarcerated offenders are stigmatized by their incarceration past” (Hutcherson 316). This causes many problems for those who have been convicted and can make adjusting to society, even more of a hardship. Already “due to spending significant time incarcerated, these individuals are prevented from acquiring human capital, or the job skills and experience necessary for conventional labor market success” (Hutcherson 317).

The financial burden on incarceration has already been discussed in depth but this section takes this effect one step further because convicted people not able to find good financially stable employment and often are considered low-income. Convicted individuals are unable to use resources to aid low-income people to help them survive in society. An example of this is SNAP. SNAP or Supplemental Nutrition Assistance Program is a food stamps program that feeds low income individuals who do not have access to healthy foods. In Texas, felons are banned from using SNAP unless you are a defendant with a “felony drug convictions who have completed their sentences” (Thompson 4). Texas has just relaxed their ban by allowing felons with non-violent drug convictions to be eligible for SNAP but all other offenders are barred from receiving benefits. With felons already having difficulty being financially stable with employment, barring

them from low income services makes adjusting to society all more difficult. This very much could be a reason as to why re-offense rates are so high.

Another program that is unavailable to convicted individuals is public housing. According to Human Right Watch “Federal law bans outright three categories of people from admission to public housing: those who have been convicted of methamphetamine production on the premises of federally funded housing, who are banned for life; those subject to lifetime registration requirements under state sex offender registration programs; and people who are currently using illegal drugs, regardless of whether they have been convicted of any drug-related offense”. This effort by the federal government is reasoned as an effort to keep low income housing safe. This reasoning obviously makes sense for certain crimes, like crimes against children or like the ones mentioned in the above clause. But unfortunately, most felons have an extremely hard time qualifying for public housing even if they do not fall into the three categories stated above. Adding to the difficulty of finding housing, “Federal law still allows landlords to deny housing to anyone convicted of drug manufacturing or distribution, even though the War on Drugs resulted in grossly disproportionate arrest, conviction, and sentencing rates of African Americans for drug offenses” (Equal Justice Initiative). But this is the only restriction landlords have, as it is illegal for a landlord to discriminate against someone with a criminal record. Regardless, the restriction put in place make adjusting and reintegrating into society all more difficult for those who have a criminal past. There is no question that families are affected by these restrictions as well. Making housing difficult for those who have a criminal conviction can lead to reincarceration and homelessness. This is another problem within the criminal justice system that seems to be avoided or ignored but most likely is very contributes to the systemic problem of repeat offending.

Another social program that discriminates against those with felony convictions is TANF or Temporary Assistance for Needy Families. The federal government completely bans TANF from those with a felony conviction unless it is a one-time minor drug possession felony. It is easy to see that once someone is free from their punishment or even has even been taken off supervision that the hardship of involvement in the criminal justice system lingers for the entirety of their life. Additionally, these effects explained in this chapter can involve families as well. This adds to the effects already mentioned in chapter 2. The reasoning behind these kinds of punishments all argue that the defendants must take responsibility for their actions. This makes sense in theory, if you commit a crime there are consequences. But how long should this punishment last, and how does punishment affect others that are close to the defendant. It is obvious in this chapter that the scope of both of those questions remains quite large as defendants experience the remains of their crime through discrimination for the entirety of their lives and often the lives of their families as well.

4. PHILOSOPHICAL IDEAS OF JUSTICE AND RESPONSIBILITY

These previous chapters have provided an in-depth analysis on incarceration and the effects it has on every impacted individual within a given criminal case (whether that be direct victims or defendants or their families). There also has been analysis on the varying punishment that defendants can be given based on the severity of their crimes. After exposing the effects of punishment on victims, third-party, and defendants, now it is crucial that questions of justice and responsibility are put into perspective to get an understanding, not only of the seemingly silent reaction from all leaders and departments of the criminal justice field, but also what can be done about these injustices on all sides. The following chapter is a philosophical analysis of what is due to third-party victims

4.1 Injustice

This research has uncovered many different arguments for the claim that the immediate family of the defendant are third party victims of injustice. These various injustices have been mentioned before throughout the previous chapter but an in-depth explanation and description of the ways in which the criminal justice system fails family members will be described in full here.

The simple fact that family members experience the ripple effects of punishment in and of itself is an injustice as mentioned many times before, these individuals are innocent and have not been arrested nor charged with a crime, thus for them to experience punishment is unjust and unreasonable. This is especially true when these families have children. Hampton's distinction between wrongs and harms applies in a similar manner in these cases. Third-party victims are wronged because they experience effects of punishment for a crime of which they are innocent. From this wrong, they experience many harms that are detailed in chapter 2. Financial,

psychological, and reputational consequences, and the especially severe impact all of these have on children systemically, are all harms that third-parties experience unjustly. Yet, as mentioned before, third parties are not given the ability to rectify their injustice nor are they helped by the state in any way.

We should also consider the specific injustice that is experienced by third parties when someone is taken away from them. Kimberley Brownlee writes in her book, *Being Sure of Each other: An Essay on Social Rights and Freedoms*, that we as humans are social beings and have a right to have others around us. More specifically, taking someone away from us violates our social right and freedom. She writes, “This injustice occurs when our social abilities, opportunities, and connections are wrongly compromised in ways that prevent us from meaningfully trying to sustain specific other people” (Brownlee 3). We as humans have a right to interact with others and furthermore our own families. It is within our needs as a human to have access to social environments. Incarceration violates the social rights on both ends, Brownlee declares, in the case of both the defendant as well as their family. This insight can be connected to the types of punishments that were examined in the last chapter. Punishments that take defendants away from their families for long periods of time always have worse effects on those families. This raises the question of whether the state should implement and ask for alternative forms of punishments instead of imprisonment to better respect the families’ social rights and the fundamental value that the family dynamic has in American society. This idea of injustice experienced by third parties also provides another reason as to why the state should include them in the aid available to victims, since it is the state who is inflicting this punishment on the defendant and their family.

It is evident that when it comes to criminal justice, restorative justice philosophies are more ideal for defendants and their families. Alternatives to incarceration (like pre-trial diversion), allow for families and defendants to stay together while the course of the criminal

case is active. Because families are able to stay together, the effects that third-party individuals experience, as described in chapter 2, are minimized. This is important to note because, although families might still experience harms by the defendant's involvement in crime, defendants are able to rectify this injustice in many different ways themselves. Since they are not incarcerated, they are able to have an active role in fixing their mistakes and the issues they have brought onto their family. With that being said, when discussing this argument of why third parties ought to be given aid like other victims, the very idea of responsibility must be established in order to truly understand from whom third parties should seek justice for their experienced wrongs and harms.

4.2 Responsibility

When trying to find who is in fact responsible for the injustice done to third-party victims of crime, there are many different factors to consider. The criminal justice system involves many different parties and they all come together to create various effects. The following section analyzes these different parties and asks whether they are partially responsible or not.

The most obvious party that many first see to be responsible for the injustice families experience are the defendants themselves. This is a very plausible answer to the question of responsibility, at least on the surface level. The defendant has committed a crime and they are responsible for the consequences that come with that decision. They have initiated the involvement of the states as well. In many cases, the defendant is found to be guilty and that is part of the consequences they experience.

However, there are issues with this line of reasoning. First, the injustice experienced by third-parties begins before a verdict of guilt is determined. The initial arrest, hiring an attorney, and other very costly and traumatic incidences are involved before we can willfully determine someone is guilty of a crime and consequently should be punished. Another flaw in this reasoning is that the criminal justice system prevents defendants from rectifying this injustice that they have put onto their

families. This was explained earlier in chapter 3. Defendants who are incarcerated, are under strict bond regulation, or are not able to be functional in society are unable to rectify harms. Specifically with incarceration, the state (who is administering punishment) takes the ability of the defendant to rectify the injustices to their family away. They are unable to work, unable to be a functioning parent or spouse, and most importantly they are unable to be there for their families as they experience these harms. Blaming defendants while blocking their ability to rectify their family's hardships leaves this problem unresolved. It does not provide for third-party victims nor does it validate or recognize the injustice done to them. The defendant might be responsible, but under the current processes of our criminal justice system, leaving them responsible to fix the harms and wrongs does not address the main issues for third-party victims.

Like mentioned before, arguably, the state bears some responsibility. This is the side from which punishment is being pursued and established. Whether that involves a plea deal or going to trial and asking a jury for punishment, the state is thoroughly involved in the outcome of a criminal case. This raises the question of whether the state is responsible for this injustice. This is a reasonable determination idea to consider, especially because the state can determine what kind of punishment to seek. Referencing chapter 3, punishment can range from pretrial diversion to lifelong incarceration. Since the state has a significant say in punishment determination, they ought to be considerate of how third parties might be affected by the punishment that they seek. We can see with District Attorney Offices that take on a more restorative philosophy of justice that this consideration does make a difference to the experiences of families. Re-offense rates of defendants who go through pre-trial diversion programs are extraordinarily low and often allow defendants to continue work as well as remain at home with their families' support. If we think of responsibility in terms of how influential decisions can be to the injustice third parties experience, it is clear that the state has significant responsibility in the injustice of families of defendants. The state has the ability to

minimize these injustices through the scope of punishment they choose to enact. Since this determination and ability is up to the state, it is fair to say they are responsible.

There are inconsistencies in where the state decides to insert themselves into victim lives. Like mentioned before, the state is not responsible for the wrongs and harms done to direct victims but provide aid to them anyway. The same is not done for families of defendants who seemingly experience similar wrongs and harms. The state has taken on the responsibility to rectifying the injustice even though they are not responsible for the wrongs and harms done to direct victims. The state has inserted themselves in this injustice and taken steps to try and fix the harms direct victims experience. However, when it comes to injustice that they have some measure of responsibility in (that being the injustice of third-party victims), they do not provide the same services. There is no official answer as to why this is but there are many possible explanations.

Regardless of the politics that run the District Attorney Offices of the counties in the United States, third party victims do not qualify for the aid that direct victims are able to receive. These Victim Compensation Programs are funded by the states and are approved by the state legislatures which means the state legislatures have not seen this unresolved injustice as an issue. It is possible that the government sees direct victims as people akin to those who need relief after a natural disaster. The state might feel as though they are simply responsible for the wellbeing of their citizens, especially if they are innocent. But this kind of reasoning would apply just as well to the families of defendants. Third party victims of crime are also in need of help.

Another reason why VCPs don't include the families of defendants might be that the state believes it has failed to protect the direct victim and so they feel obligated to help them after this failure. This is very plausible, but this reasoning still does not address the main issue of injustice that is central to the problem presented in this thesis. This is because although the state might

feel obligated to help direct victims, this does not necessarily mean that they do not have a duty to help third party victims as well.

As mentioned in chapter 2, third-party victims experience reputational harms since they are associated with the defendant. Ultimately, the state might see that there is too much stigma involved in providing aid for third party victims. These victims are connected to the defendant so helping the family inherently helps the defendant. This might be seen as disrespectful to the direct victim or as something the state has no interest in since they are pursuing punishment for the defendant. Again, this argument is flawed because families of the defendants are innocent even if the defendant is not.

There is no way to know the actual reason that the state fails to help third party victims or why this injustice continues to go unaddressed. The thought might have never even crossed the mind of legislators. What is obvious however is that third party victims of injustice are not seen as a priority in the criminal justice system and that has many consequences, which were stated in chapter 3.

It is very clear at this point that third party victims, especially the families of defendants would benefit greatly from the aid that direct victims qualify for. But there might be an alternative way to reduce the impact of punishment on third party victims. Chapter 3 details the types of punishments that result from criminal cases that defendants, and consequently their families, experience. The impact of these punishments varies greatly as does their scope. We see that incarceration has detrimental effects to the family and causes irreparable harms since defendants are unable to rectify the injustice they have caused. But when we look at other forms of punishment, like pre-trial diversion, we see the scope of punishment shrink. Defendants are able to be in their homes, work, and continue to play the important role they have in their family

dynamic. This however is not enough to completely alleviate the injustice but neither is the aid that the state would theoretically provide. Still, since the state is responsible for punishment, they ought to consider its effects on third parties. Considering the impact punishment has on family members and the community at large, along with the other parties involved in criminal cases (like direct victims, see chapter 1), a more proactive approach to avoiding/rectifying injustice is possible. While aid from the state is more reactive since it serves to rectify the harms after they have occurred, alternative sentencing options are more proactive.

Whether the state chooses to provide victim aid to families of defendants or consider the impact punishment will have on these individuals, one thing is required: third party victims must be considered victims. The argument made throughout this thesis aims at proving that philosophically and empirically. Third party victims are normally never considered within the criminal justice system, even though they are profoundly impacted by it. They have been ignored and because of this, the effect crime has on communities and society is infinitely large. In order to be able to avoid injustice to those who are innocent, they must be deemed important and considered in the decisions that are made within criminal cases.

CONCLUSION

All of the chapters of this thesis serve the purpose of showing the impact punishment has on victims, defendants, and families. Specifically, third party victims of crime are a corner of the criminal justice system that have been ignored by those who decide punishment and determine the true reasoning of punishment in the United States. Like mentioned before, governments are not required to take into account other individuals when deciding the punishment of defendants. However, they often do this. They almost always keep in mind the direct victim if there is one. They do this for a number of reasons but all of them circle around the idea that the direct has experienced an injustice. Although the families of defendants are not direct victims and are instead considered third party victims, they experience an injustice and much of the same harms of direct victims. Financial, psychological, and emotional effects are just the ones that have been mentioned in this thesis. Additionally, families of defendants do not have the luxury of community support and often experience reputational harms for their association with the defendant. This brings forth the question of who is responsible for this injustice and how it can be avoided or rectified. Currently the government offers third party victims and the families of defendants nothing. They are left on their own to put together the broken pieces of their lives that come directly from their involvement in the criminal justice system. This injustice must be addressed; it is a basic principle that our country was built on. Those who experience an injustice have the right to seek to rectify it and those who create an injustice must be responsible for the consequences they face. So what does this mean for third-party victims, and more specifically the families of defendants who suffer because of their unintentional involvement? My two concluding options to address this issue are this. Either the state considers providing aide like

they do with direct victims or the state takes into account the scope and effect punishment has outside the defendant and the direct victim.

In order for the state to provide aide, funding needs to be put in place statewide. Providing aide to third parry victims is a policy issue. Being that this thesis is based in the State of Texas, it is very unlikely that this kind of aid will ever come to fruition as conservative republicans dramatically outnumber progressive democrats in the legislative, executive, and judicial branches of Texas government. Conservatives in general take on a “tough on crime” approach to criminal justice and are unlikely to involve themselves in any kind of criminal justice reform that helps defendants in any way. Because of this, Texas is unlikely to see this issue resolved in the near future. Even if ruled by progressive democrats, this issue might never see financial attention. But certainly, whether a system of aid is created for the families of defendants is completely up to those who are in power to determine spending and budgeting of a state or the nation. This option, although possible, is much more difficult of a solution than this following option.

By enforcing the discretion of third-party victims when considering punishment, the scope of sentencing and punishment may reduce the injustice that has been described throughout this thesis. Being more specific, if prosecutors are able to better dictate their punishment and determine the scope of punishment, these injustices that families of defendant’s experience might be reduced. The term “scope of punishment” is something that has been used before and normally involves the impact punishment has on society. My interpretation of this term is similar but focuses more on the case by case basis in which punishment is decided. This is not to disregard the known denotation of this term, but I am simply stating that by looking at punishment on a case-by-case basis, there can be complete determination in how crime affects

society. It was mentioned in chapter 3 how different forms of punishment affect defendants and consequently affect their families. What was found was that pretrial intervention is the form of punishment that impacts families the least. Pre-trial diversion allows for defendants to rectify the injustice their families have experienced, and they also avoid the tough consequences of incarceration and post-incarceration programs have. It is important to note that pre-trial diversion has many issues and does not completely deflect and avoid all injustices of third parties. Pre-trial diversion is really only used at the misdemeanor level and sometimes with minor felonies but does not really hold any experience when dealing with violent crime, which seems to be have a huge societal impact on the United States. However, it does the best job out of all the other forms of punishment being used by prosecutors currently.

That being said, injustice of family members starts at the second that the defendant is detained, arrested, and booked into county jail. Just these acts alone cause families to experiences stressors and financial burdens that they wouldn't experience otherwise. Truly solving this issue entirely would probably involve a complete renovation of the criminal justice system, which is not realistic at the moment. But the reform that has been done so far has taken steps in the right direction. Especially when considering the scope of punishment, restorative justice philosophies aim at reducing the injustices that third-party victims experience in an effort to reduce the societal negative impact crime has on society. This was mentioned thoroughly throughout chapter 3. If we were to reduce the injustice and negative consequences that third parties experience for every criminal case, the systemic issues that crime causes in American society would reduce drastically. This is why the scope of punishment is so important for prosecutors to consider. Punishment is a fundamental attribute of the criminal justice system. Although it is controversial, to deny its roles in the system would be negligent. If we are to

continue to use punishment as a consequence in the criminal justice system, we ought to keep in mind its scope and how it affects others who are innocent. By keeping this in mind while considering punishment, we will be able to reduce the systemic ripple effects that incarceration has on families and communities, and hopefully keep the innocent away from injustice and incarceration.

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